



April 7, 2004

**VIA EMAIL TO:**

Alberta Securities Commission  
British Columbia Securities Commission  
Manitoba Securities Commission  
New Brunswick Securities Commission  
Securities Commission of Newfoundland and Labrador  
Registrar of Securities, Department of Justice, Government of the Northwest Territories  
Nova Scotia Securities Commission  
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut  
Ontario Securities Commission  
Prince Edward Island Securities Office  
Autorité des marchés financiers  
Saskatchewan Financial Services Commission  
Registrar of Securities, Government of Yukon

c/o

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Dear Sirs/Mesdames:

**Re: Romspen Investment Corporation Comments on Proposed National Instrument 45-106 Prospectus and Registration Exemptions**

We welcome the opportunity to provide our comments to the members of the Canadian Securities Administrators (CSA) regarding proposed *National Instrument 45-106 - Prospectus and Registration Exemptions* ("NI 45-106"). Specifically, our comments relate to exclusion of syndicated mortgages from the mortgage exemption contemplated by section 2.37 of NI 45-106. Romspen Investment Corporation ("Romspen") is registered as a mortgage broker under the *Mortgage Brokers Act* (Ontario). We understand that while the request for comment period expired on March 17, 2005, the CSA are amenable to receiving our comments in light of the fact that Romspen is a stakeholder in the mortgage industry and in light of the fact that the CSA is seeking specific comment regarding the exclusion of syndicated mortgages from the exemption contemplated by section 2.37 of NI 45-106.

The commentary relating to syndicated mortgages set out in the Request for Comments issued by the CSA on December 17, 2004 provides as follows:

The "syndicated mortgage" carve-out is based on the analogous exemption set out in British Columbia securities legislation. There is no similar carve-out in Ontario securities legislation. We believe that, given the potential complexity of syndicated mortgages, they should not be traded under this exemption. **We seek specific comment on the exclusion of syndicated mortgages from this exemption.**

We have a number of comments regarding the above referenced commentary and the potential negative impact on the mortgage industry, particularly in Ontario, of excluding syndicated mortgages from the mortgage exemption contemplated by section 2.37 of NI 45-106.

### **Investments in Syndicated Mortgages**

Investments in syndicated mortgages have been characterized as being complex and as such should not be traded under the mortgage exemption. We respectfully submit that syndicated mortgages are not complex and that investors' understanding of mortgages generally allow them to understand syndicated mortgages. A syndicated mortgage is nothing more than a mortgage where 2 or more persons participate as lenders instead of a single person. Interest and repayment terms are the same as a standard mortgage. Syndicated mortgages are investments secured against real property and are generally not considered speculative. Arguably, investments in syndicated mortgages are superior to investments in standard mortgages because they facilitate the diversification of the risk profile of an investor's mortgage portfolio by allowing for smaller investments in mortgages from a larger number of borrowers. We respectfully submit that syndicated mortgages and standard mortgages should be treated in the same manner from a public protection perspective.

### **Existing Mortgage Broker Regulation**

In Ontario, dealing in mortgages is currently regulated by the *Mortgage Brokers Act* (Ontario). On March 21, 2005 the Ministry of Finance released a consultation draft of the *Mortgage Brokerages, Mortgage Lenders and Mortgage Administrators Act* (Ontario) (the "Consultation Draft"), which, if enacted, would replace the *Mortgage Brokers Act* (Ontario).

The Consultation Draft provides that if section 2.37 of NI 45-106 is implemented in its current form no duplicative regulation of syndicated mortgages will be contained in the new *Mortgage Brokerages, Mortgage Lenders and Mortgage Administrators Act* (Ontario). We are concerned that this approach would result in a two-tiered mortgage market in Ontario. Presumably, the trading of mortgages, other than syndicated mortgages, would be subject to the new *Mortgage Brokerages, Mortgage Lenders and Mortgage Administrators Act* (Ontario) while the trading of syndicated mortgages would be subject to Ontario securities law. Mortgage brokers would be required to comply with two completely different disclosure and registration regimes in order to deal with mortgages the form of which are the same except for the number of persons participating as lenders.

We respectfully submit that the Ministry of Finance and the Ontario Securities Commission should agree on a uniform approach to the regulation of the trading of mortgages, syndicated or otherwise, in Ontario. We respectfully submit that no change to the status quo should be enacted by either the Ministry of Finance or the Ontario Securities Commission until a uniform approach can be agreed upon.

### **Universal Registration in Ontario**

It appears that Ontario is proposing to adopt the syndicated mortgage carve-out in the interest of harmonizing the mortgage exemption available to mortgage brokers in Ontario with the mortgage exemption available to mortgage brokers in other Canadian jurisdictions. However, the universal

registration regime in Ontario would impose an unfair regulatory burden on mortgage brokers in Ontario. The removal of exemptions for market intermediaries in Ontario would require a mortgage broker in Ontario to seek registration as a limited market dealer in order to avail itself of the accredited investor exemption; mortgage brokers in most Canadian jurisdictions outside Ontario (i.e. British Columbia) are not be subject to such further regulatory burden.

We respectfully submit that Ontario should either abandon its universal registration regime in favour of the approach adopted in most other Canadian jurisdictions or allow syndicated mortgages to be traded under the mortgage exemption to relieve Ontario mortgage brokers of the unfair regulatory burden of registering as limited market dealers.

In summary, our primary concern is that a uniform approach to the regulation of mortgages, syndicated or otherwise, is adopted by the Ontario Securities Commission and the Ministry of Finance. We respectfully submit that investments in syndicated mortgages are not complex and therefore should receive the same treatment as investments in standard mortgages. Given that the Financial Services Commission of Ontario has historically regulated this industry, we respectfully submit that they continue to do so and that the Ontario Securities Commission apply the mortgage exemption to syndicated mortgages.

We thank you for the opportunity to provide these comments beyond the March 17, 2005 deadline. Please do not hesitate to contact the undersigned should you have any questions.

Sincerely,

/s/ Wes Roitman

Wes Roitman  
Chief Financial Officer  
Romspen Investment Corporation

cc: Mr. Mike Colle, Ministry of Finance (via e-mail - [mikecolle.mbconsultations@fin.gov.on.ca](mailto:mikecolle.mbconsultations@fin.gov.on.ca))